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Kathy Dunn  
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Duke Energy Carolinas  
526 South Church Street  
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Attn.: Director, Supply Side Resources  
DERContracts@duke-energy.com

Copy to:

David Johnson  
ST 14A 400 South Tryon Street  
Charlotte, NC 28285  
david.johnson@duke-energy.com

Date: September 17, 2018

Re: Notice of Commitment to Sell Output of a Qualifying Facility – Cherokee County Cogeneration Partners, LLC

Greetings:

Cherokee County Cogeneration Partners, LLC (“Cherokee”) submits the enclosed executed Notice of Commitment to Sell the Output of a Qualifying Facility (“Notice”) with respect to Cherokee’s 86 MW cogeneration facility that currently sells its full output to Duke Energy Carolinas, LLC (“DEC”). The facility is a fully operational QF as described in the self-certification of qualifying facility (“QF”) status filed with the Federal Energy Regulatory Commission (“FERC”) in Docket No. QF94-160-012 (the “Facility”). By submitting this Notice, Cherokee is making a legally binding offer of all capacity and energy associated with the Facility to DEC as of January 1, 2021, the day after expiration of its current Power Sales Agreement between Cherokee and DEC dated June 28, 2012, effective between July 1, 2013 and December 31, 2020 (“Power Sales Agreement”).

Consistent with DEC’s and Cherokee’s prior business practices with respect to the Power Sales Agreement, Cherokee submits this legally binding offer prior to the expiration of its present contract. DEC and Cherokee entered into the Power Sales Contract over a year before expiration of the prior agreement, and began negotiations well before the contract was executed (approximately January of 2012). This practice helps to ensure a smooth transition to the next contract term by providing certainty to both parties

with respect to the effective avoided cost rate, and enabling DEC to take the Facility into account in its resource planning and capacity needs. Cherokee looks forward to working with DEC to reach mutually agreeable terms and establish the applicable avoided cost rate for the new contract.

The Notice establishes Cherokee's legally enforceable obligation ("LEO") under the Public Utility Regulatory Policies Act ("PURPA"), FERC's implementing PURPA regulations, and applicable FERC precedent. This Notice is consistent with the approach toward PURPA implementation referenced by FERC with respect to merger of DEC and Duke Energy Progress, LLC ("DEP"), where FERC expressly relied on the representations of the Duke merging parties that both DEP and DEC would each remain subject to their PURPA obligations post-merger. *See* Order on Disposition of Jurisdictional Facilities and Merger, 136 FERC ¶ 61,245 at ¶ 148 (2011).

Pursuant to PURPA and its implementing regulations, Cherokee establishes the avoided cost for its energy and capacity as of today, September 17, 2018, the date that the LEO is incurred. *See* 18 C.F.R. § 292.304(d)(2)(ii) (providing an unqualified right for QFs to establish avoided costs calculated at the time the LEO obligation is incurred). Cherokee provides its Form 556, Negotiated Pricing Template, and a DEC Notice of Commitment form, thereby establishing its LEO for DEC as of today, September 17, 2018 to purchase all of its output made available as of January 1, 2021, the day after the Power Sales Agreement expires. However, if DEC believes it needs additional information for Cherokee to establish the LEO, Cherokee requests that DEC inform Cherokee within five (5) business days.

We look forward to a productive process for negotiating and finalizing a new power purchase agreement for the Facility, which builds on the years of working together under the Power Sales Contract. If you have any questions regarding the enclosed information, please contact me at your convenience.

Sincerely,




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Name: Carolyn Murff  
Title: Senior Vice President  
Cherokee County Cogeneration Partners, LLC

#### **Attachments**

Cherokee County Cogeneration Partners, LLC FERC Form 556  
Negotiated Pricing Template  
Notice of Commitment of Cherokee County Cogeneration Partners, LLC

Duke Energy Carolinas, LLC  
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Kathy Dunn  
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Kathy.Dunn@duke-energy.com

Date: December 12, 2018

**Re: Notice of Commitment to Sell Output of a Qualifying Facility to Duke Energy Progress – Cherokee County Cogeneration Partners, LLC**

Greetings:

Cherokee County Cogeneration Partners, LLC (“Cherokee”) submits to Duke Energy Progress, LLC (“DEP”) the enclosed executed Notice of Commitment to Sell the Output of a Qualifying Facility (“Notice”) with respect to Cherokee’s 86 MW cogeneration facility that currently sells its full output and is directly interconnected to Duke Energy Carolinas, LLC (“DEC”). The facility is a fully operational QF as described in the self-certification of qualifying facility (“QF”) status filed with the Federal Energy Regulatory Commission (“FERC”) in Docket No. QF94-160-012 (the “Facility”). By submitting this Notice, Cherokee is making a legally binding offer of all capacity and energy associated with the Facility to DEP as of January 1, 2021, the day after expiration of its current Power Sales Agreement between Cherokee and DEC dated June 28, 2012, effective between July 1, 2013 and December 31, 2020 (“Power Sales Agreement”). Cherokee has been providing capacity and dispatchable energy to DEC under this Power Sales Agreement.

Consistent with Cherokee’s prior business practices with respect to the Power Sales Agreement, Cherokee submits this legally binding offer prior to the expiration of its present contract with DEC. This practice helps to ensure a smooth transition to the next contract term and will enable DEP to take the Facility into account in its resource planning and capacity needs. Cherokee looks forward to working with DEP to reach mutually agreeable terms and establish the applicable avoided cost rate for the new contract.

The Notice establishes Cherokee’s legally enforceable obligation (“LEO”) under the Public Utility Regulatory Policies Act (“PURPA”), FERC’s implementing PURPA regulations, and applicable FERC precedent. This Notice is consistent with the approach toward PURPA implementation referenced by FERC with respect to merger of DEP and DEC, where FERC expressly relied on the representations of the Duke merging parties that both DEP and DEC would each remain subject to their PURPA obligations post-merger. *See* Order on Disposition of Jurisdictional Facilities and Merger, 136 FERC ¶ 61,245 at ¶ 148 (2011). The Duke companies also emphasized the economies of scale and efficiencies that would

result by the interconnected DEC and DEP systems operated on an integrated, jointly dispatched basis, "to permit the more efficient operation of their combined resources."<sup>1</sup>

As Cherokee has explained in communications with DEC, Cherokee is indifferent as to whether or not it "puts" its energy and capacity to DEP, DEC, or both. While DEC has recently informed Cherokee that it does not have a current capacity need until 2028 and did not include a capacity component in its indicative avoided cost rates, Cherokee notes that DEP does have a capacity need, as evidenced by its 2018 Integrated Resource Plan and its recent request for proposal for capacity issued by DEP dated August 27, 2018. Therefore, even if DEC does not have a capacity need, the Duke companies can make the most efficient use of existing facilities and can avoid unnecessary capacity additions or procurements by facilitating Cherokee's PURPA of energy and capacity to DEP.

Cherokee, similar to DEC's own generation, may be recognized as a network resource for DEP.<sup>2</sup> Further, under 18 CFR § 292.303, it is the QF's option whether to sell to a directly or indirectly interconnected utility, as the relevant PURPA regulation provides that a utility "shall purchase" any energy and capacity from a QF indirectly connected that elects to have the power wheeled to the indirectly connected utility. Cherokee's request to sell to DEC, DEP, or both, optimizes Cherokee's value as a resource, helps avoid unnecessary capital additions, and is fully consistent with PURPA requirements, in general, and Cherokee's rights as a QF under PURPA, specifically.

Pursuant to PURPA and its implementing regulations, Cherokee establishes the avoided cost for its energy and capacity as of today, December 10, 2018, the date that the LEO is incurred. *See* 18 C.F.R. § 292.304(d)(2)(ii) (providing an unqualified right for QFs to establish avoided costs calculated at the time the LEO obligation is incurred). Thus Cherokee requests that DEP tender its avoided cost rates to Cherokee as soon as possible to inform the companies' negotiations.

The documents attached hereto provide the information to establish a LEO for DEP to purchase all or part of Cherokee's energy and capacity output made available as of January 1, 2021, the day after its current Power Sales Agreement expires. However, if DEP believes it needs additional information for Cherokee to establish the LEO, Cherokee requests that DEP inform Cherokee within five (5) business days and detail the specific information requested.

We look forward to a productive process for negotiating establishing a new power purchase agreement for the Facility. If you have any questions regarding the enclosed information, please contact me at your convenience.

Sincerely,



Name: Carolynne Murff  
Title: SVP

<sup>1</sup> *Id.* at P 5.

<sup>2</sup> Though Cherokee is physically interconnected to DEC, there should not be any impediment to Cherokee being designated as a DEP network resource and Cherokee's power being delivered to DEP. *See, e.g.*, Section 30.6 of the Joint OATT.

**Cherokee County Cogeneration Partners, LLC**

**Attachments**

**Cherokee County Cogeneration Partners, LLC FERC Form 556**

**Negotiated Pricing Template**

**Notice of Commitment of Cherokee County Cogeneration Partners, LLC**